INDEX

Subject Index

	Page
Statement as to jurisdiction	1
Jurisdiction of the Supreme Court of the United States	1
Decisions sustaining jurisdiction	2
State statutes involved as to constitutionality	2
Decree appealed and date thereof	3
Nature of case and ruling below	3
Substantial questions involved	4
Constitution question raised	4
Constitution question saved for review	5
Appendix "A"—Decree and opinion of the Supreme Court of Michigan	7

Table of Cases Cited

Citizens Savings & Loan Association v. *City of Topeka*, 87 U. S. 655, 22 L. Ed. 455	2
Hazel Park Non Partisan Taxpayers Association, et al. v. *Township of Royal Oak, et al.*, 317 Mich. 607	2
Miller v. *Schoene*, 276 U. S. 272, 48 Sup. Ct. 246, 72 Fed. 568	2
Myles Salt Co. v. *Board of Commissioners*, 239 U. S. 478, 60 L. Ed. 392	2
Road Improvement District v. *Missouri Pacific Ry. Co.*, 274 U. S. 188, 71 L. Ed. 992	2
Village of Norwood v. *Baker*, 172 U. S. 269, 43 L. Ed. 443	2

Statutes Cited

Act No. 116 of the Public Acts of Michigan, 1923, as amended by Act No. 58 of the Public Acts of Michigan of 1927	2

Page

Act No. 13, Sec. 4, subdivision (k) erroneously stated (i) of the Public Acts of Michigan 1932, as amended and retained in Act No. 271 of 1937, Sec. 4, subdivision (d) 3

Constitution of the United States:

Fifth Amendment 5

Fourteenth Amendment 5

Judicial Code, Section 237 (a), as amended by the Acts of January 31, 1938 (R. S. 690, 709), March 3, 1911, as amended, January 31, 1928, C. 14, Sec. 1, 45 Statutes 54 2

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 413

HAZEL PARK NONPARTISAN TAXPAYERS ASSOCIATION, ET AL.,

Appellants,

vs.

TOWNSHIP OF ROYAL OAK, ET AL.

APPEAL FROM THE SUPREME COURT OF THE STATE OF MICHIGAN

JURISDICTIONAL STATEMENT

Now come the plaintiffs, Hazel Park Nonpartisan Taxpayers Association, and John G. Campbell and the cross-plaintiffs, City of Pleasant Ridge and City of Huntington Woods, being cross-appellants in the said cause, and in support of their petition for appeal, submit this jurisdictional statement in accordance with United States Supreme Court Rule No. 12.

Jurisdiction of the United States Supreme Court

The Supreme Court of the United States has jurisdiction upon appeal to review the decree of the Supreme Court of the State of Michigan filed and entered on the 24th day of

June, 1947, in pursuance of decision reported in 317 Mich. 607, as follows:

Subsection (a) of Sec. 237 of the Judicial Code as amended by Act of January 31, 1928 ((R. S. 690, 709) March 3, 1911 as amended, January 31, 1928, C. 14 Sec. 1, 45 Statutes 54) provides for such jurisdiction, as an appeal from:

> "A final decree in any suit in the highest court of a state in which a decision in the suit could be had, where is drawn in question the validity of a statute of any state, on the ground of its being repugnant to the Constitution . . . of the United States, and the decision is in favor of its validity, . . ."

Decisions Sustaining Jurisdiction

The following decisions of this Court sustain jurisdiction of this appeal:

Miller v. *Schoene* (Va. 1928) 48 S. Ct. 246, 276 U. S. 272, 72 Fed. 568;

Citizens Savings & Loan Association v. *City of Topeka,* 87 U. S. 655, 22 L. Ed. 455;

Village of Norwood v. *Ellen R. Baker,* 43 L. Ed. 443, 172 U. S. 269;

Myles Salt Co. v. *Board of Commissioners,* 60 L. Ed. 392, 239 U. S. 478;

Road Improvement District v. *Missouri Pacific Ry. Co.,* 71 L. Ed. 992, 274 U. S. 188.

State Statutes Involved as to Constitutionality

The statutes, the validity of which are involved are:

Act No. 116 of the Public Acts of Michigan, 1923, more particularly amended by Act No. 58 of the Public Acts of Michigan 1927;

". . . If any such special assessment fund is insufficient to pay such bonds and interest thereon when

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due, *the township board shall advance the amount necessary to pay such bonds,* and shall be reimbursed from such assessments when collected, or by reassessment of the deficiency if necessary." (italics ours.)

Act No. 13, Sec. 4, subdivision (k) erroneously stated (i) of the Public Acts of Michigan 1932 (1st Ex. Sess.) as amended and retained in Act 271 of 1937, Sec. 4, subdivision (d);

"All refunding bonds issued under the provisions hereof, except those issued to refund drainage bonds issued under the terms of act number three hundred sixteen (316) of the public acts for the year nineteen hundred twenty-three (1923), as amended, shall, unless otherwise provided in such refunding bonds, *be the general obligation of the issuing municipality and the full faith and credit of the same shall be pledged to the payment thereof.*" (italics ours.)

Decree Appealed and Date Thereof

The decree of the Supreme Court of the State of Michigan sought to be reviewed was signed, dated and filed on the 24th day of June, 1947 and this application for appeal was presented on the 4th day of September, 1947.

Nature of Case and Ruling Below

This is a Class Suit brought under equitable jurisdiction of the Circuit Court for Oakland County, Michigan, in Chancery, to determine the validity of, and liability upon, certain Special Assessment Bonds issued by various Special Assessment Local Improvement Districts of Royal Oak Township, a defendant.

These Special Assessment Local Improvement Districts were established for the construction of local sewer and water lines and they assessed the full cost of the improvements against properties in the districts according to benefits. No portion of any of the cost was assessed to the Township of Royal Oak, or any other unit of government.

The Local Improvement Districts remain in Royal Oak Township, except for portions thereof which have now become parts of other cities, namely: Ferndale, Royal Oak and Hazel Park.

The Special Assessment Bonds in question were issued in 1926, prior to the enactment of the aforementioned statutes, *and were payable solely from special assessment collections, and not by general township tax or liability.* After the bonds were defaulted, through failure of the local improvement district tax collections, the Acts, constitutionally questioned, were held to create, retroactively, liability upon *unbenefited* properties and cities. Plaintiff, Hazel Park Nonpartisan Taxpayers and John G. Campbell represent Taxpayers as a Class owning property lying outside the Special Assessment Districts, who by virtue of the above statutes will be required to pay the defaulted bonds under the ruling of the Michigan Supreme Court.

Appellant Cities of Pleasant Ridge and Huntington Woods were incorporated out of territory of Royal Oak Township in 1928 and 1932 respectively, taking no territory from any of the Special Assessment Districts, nor were they benefited by any of the Special Assessment Projects in question. No portion of the cost of the local improvements was assessed against them or properties now within their boundaries.

Substantial Question Involved

By virtue of said statutes and the opinion and said Decree of the Michigan Supreme Court all appellants as a Class will be obligated to pay in excess of $300,000 of such bonds, and a substantial question is thus involved.

Constitution Question Raised

The Acts complained of impose upon appellants, taxation and obligations for which they receive no benefit and the

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payment of which serves no public purpose and enures entirely for the benefit of private individuals. This violates Article V and Article XIV, Sec. 1, of the Amendments in the Constitution of the United States.

Constitution Question Saved for Review

These constitutional questions were seasonably raised by appellants in the Pleadings, on trial in the Circuit Court, by Assignment of Error and Reasons and Grounds for Appeal, and in appropriate briefs and arguments, before the Supreme Court of the State of Michigan, and in all instances appellants' contentions were over-ruled, being expressly passed upon in the opinions and decrees of both the Circuit Court and the Supreme Court of Michigan. Appellants pleadings prayed: (See Record, Michigan Supreme Court pp. 114-117):

> "That this Court may decree that Act 58 of 1927, Act 26 of 1931 and Act 271 of 1937 are invalid and inoperative as to bonds issued prior thereto for the reasons that these statutes if retrospective in scope, or applicable to then outstanding bonds . . . deny municipalities and the tax-payers thereof due process of law and equal protection of the laws and impair the obligation of contract contrary to the provisions of Article I, Sec. 10, Paragraph 1 of the Constitution and Article V and Article XIV, Sec. 1 of the Amendments to the Constitution of the United States of America. . . ."

The Opinion of the Supreme Court of Michigan stated:

> "It is the contention of the city of Pleasant Ridge and the city of Huntington Woods, cross-defendants, that (1) inasmuch as no possibility exists for reimbursement of a general fund through subsequent collections of special assessments, the 1927 amendment imposing a liability on the township to pay out of its general fund is unconstitutional, both as to bonds, theretofore and thereafter issued. . . . Neither do we find

any merit in appellant's contention that the above-quoted provision in Act No. 58, Public Acts 1927, must be held unconstitutional if applied to special assessment bonds issued prior to the effective date thereof, in that it would constitute the taking of property (of the appellant city) without due process of law. . . . In furtherance of its claim that said Act No. 58, Pub. Acts 1927, is unconstitutional in that it takes property without due process of law, appellant contends that said act authorizes the levying of a tax for a private purpose, i.e., to pay bondholders . . . Appellant contends that the proposed tax would have no purpose other than the relief of bondholders, citing cases which have held such levies unconstitutional for that reason. . . . We agree with the trial court that said act is not unconstitutional on the grounds urged. . . ."

Attached hereto are true copies of the Opinion and Decree of the Supreme Court of the State of Michigan.

STANTON G. DONDERO,
Attorney for Hazel Park Nonpartisan Taxpayers Association and John G. Campbell, Plaintiffs and Appellants and Cities of Pleasant Ridge and Huntington Woods, Cross-plaintiffs and Appellants. Business Address: 521 Washington Square Building, Royal Oak, Michigan;
ARTHUR E. MOORE,
Of Counsel,
Same Address.

Dated: August 29, 1947.

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APPENDIX "A"

STATE OF MICHIGAN

SUPREME COURT

Appeal from the Circuit Court for the County of Oakland, in Chancery Honorable Frank L. Doty, Circuit Judge

Circuit No. 21,917

Supreme Court No. 43,479

HAZEL PARK NON-PARTISAN TAXPAYERS ASSOCIATION and JOHN G. CAMPBELL, Plaintiffs and Appellees,

v.

TOWNSHIP OF ROYAL OAK, *Defendant and Cross-Plaintiff, and Appellee;* MUNICIPAL FINANCE COMMISSION (Formerly Public Debt Commission), EDGAR B. WHITCOMB and ANNA S. WHITCOMB, CITY OF HIGHLAND PARK and VILLAGE OF OAK PARK, *Intervening Defendants and Appellees;* CITY OF FERNDALE, *Cross-Defendant and Appellant;* CITY OF PLEASANT RIDGE, and CITY OF HUNTINGTON WOODS, CITY OF ROYAL OAK, CITY OF CLAWSON, CITY OF BERKLEY, *Cross-Defendants and Cross Appellants;* CITY OF HAZEL PARK, *Cross-Defendant and Appellee*

DECREE

At a session of the Supreme Court of the State of Michigan, held at the Supreme Court room in the Capitol in the City of Lansing, on the 24 day of June, 1947:

Present the Honorable Leland W. Carr, Chief Justice; Henry M. Butzel, George E. Bushnell, Edward M. Sharpe, Emerson R. Boyles, Neil E. Reid, Walter H. North and John R. Dethmers, Associate Justices.

This cause having come on to be heard, and having been duly argued by counsel for the respective parties, and having been duly considered by the court having filed a written opinion herein, and it appearing to the court that the decree

of the circuit court for the County of Oakland, in Chancery, heretofore entered in said cause, except as the same is hereinafter modified, should be affirmed.

It is therefore ordered, adjudged and decreed:

1. Liability of defendant, Township of Royal Oak, on bonds.

a. Special assessment bonds issued.

Because the Township of Royal Oak, Oakland County, Michigan issued the following Special Assessment Bonds in anticipation of the collection of special assessments in each of the Special Assessment Districts Nos. 5 to 11, 12 to 18, 22 to 25 and 27 to 35, all inclusive, for the installation of water mains, sewers and street improvements, which bonds were issued and sold in groups as follows:

Bonds re S. A. Dist. Nos.	Date of Bonds	Date of Delivery of Bonds to Purchaser	Aggregate Amount of Bonds
5 to 11 incl.	Oct. 1, 1926	Oct. 11, 1926	$342,500.00
12 to 18 incl.	Aug. 15, 1927	Aug. 19, 1927	88,750.00
22 to 25 incl.	April 1, 1928	April 7, 1928	74,500.00
27 to 34 incl.	July 1, 1928	Aug. 15, 1928	89,000.00
35	Sept. 1, 1928	Sept. 26, 1928	37,000.00
			$631,750.00

the unpaid balances of which formed the basis of the Refunding Bonds of the township involved in this action, the Township of Royal Oak, as of the aforementioned respective dates of delivery of such bonds to the purchasers, by force of law, was placed in the position of a guarantor, obligated to advance from its general funds sufficient money for the prompt payment of all principal and interest due thereon if at any time the funds derived from the collection of special assessment taxes from the rolls in said Special Assessment Districts were insufficient to make such payments, which contingent liability continued until the obligation of such bonds was fully satisfied.

b. Statutory provisions concerning Special Assessment Bonds.

The bonds issued in Districts Nos. 5 to 11, both inclusive, in the principal amount of $342,500.00, were issued under

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the provisions of Act No. 116 Public Acts 1923, as amended by Act No. 263 Public Acts 1925. The bonds issued in Districts Nos. 12 to 18, 22 to 25, 27 to 34 and 35, all inclusive, were issued under said Act No. 116, Public Acts of 1923, as so amended and as further amended by Act No. 58 Public Acts 1927, effective April 21, 1927 (Sec's. 2385-2388 C. L. '29) which latter act added to Section 3 thereof the following sentence:

> "If any such special assessment fund is insufficient to pay such bonds and interest thereon when due, the township board shall advance the amount necessary to pay such bonds, and shall be reimbursed from such assessments when collected, or by reassessment of the deficiency if necessary."

c. Township liability upon Special Assessment Bonds.

The foregoing provisions of the statutes, as construed by the decisions of the Supreme Court, created a contingent liability against defendant, Township of Royal Oak, at large, not only as to bonds issued after April 21, 1927, but also as to Special Assessment bonds in Districts Nos. 5 to 11, both inclusive, issued prior to said date, and said defendant was obligated to advance from its general funds sufficient money for the prompt payment of all principal and interest due upon said Special Assessment bonds, if, at any time the funds derived from the collection of Special Assessment taxes in said special assessment districts were insufficient to make such payments, which contingent liability continued until the obligations on such bonds were fully satisfied.

d. Township liability on Refunding Bonds.

In the years 1938 and 1939, defendant Township of Royal Oak, pursuant to the provisions of Act No. 13, Public Acts 1932 (First Extra Session), as amended by Act No. 143, Pub. Acts 1933, Act No. 42 Pub. Acts 1935 and Act No. 98 and Act No. 271, Pub. Acts 1937 (Sec's. 5.3201-19 Mich. Stat. Ann.) issued callable refunding bonds, dated October 1, 1936 and payable October 1, 1966, for the purpose of refunding the principal of such of the aforesaid Special Assessment Bonds as was then unpaid, and issued callable

certificates of indebtedness, dated October 1, 1937 and payable October 1, 1947, for the purpose of refunding the unpaid interest on such Special Assessment Bonds. The series and amounts of said refunding bonds and certificates of indebtedness, divided as to bonds bearing different issuance dates, are as follows:

Refunding Obligations	Obligations Refunded		Principal Amount Refunding Obligations Issued
Ser. A Ref. Bonds	Part of Principal of Districts 5/11 bonds		$45,600.00
Ser. B Ref. Bonds	Part of Principal of Districts 5/11 bonds		160,500.00
Ser. C Ref. Bonds	Principal of Districts 12/18 bonds	$30,175.00	
Ser. C Ref. Bonds	Principal of Districts 22/25 bonds	16,900.00	
Ser. C Ref. Bonds	Principal of Districts 27/34 bonds	24,500.00	
Ser. C Ref. Bonds	Principal of District 35 bonds	25,650.00	97,225.00
	Total Refunding Bonds Issued		$303,325.00
Certificates of Indebtedness	Interest on Districts 5/11 bonds		66,136.35
Certificates of Indebtedness	Interest on Districts 12/18 bonds		9,303.89
Certificates of Indebtedness	Interest on Districts 22/25 bonds		3,132.45
Certificates of Indebtedness	Interest on Districts 27/34 bonds		5,806.25
Certificates of Indebtedness	Interest on District 35 bonds		5,877.57
	Total Certificates of Indebtedness Issued		$ 90,256.51

The following original bonds which were authorized to be refunded were retired prior to exchange of bonds to-wit:

District No. 13	$4,000.00
District No. 15	500.00
District No. 17	500.00
1931 Ref. Bonds, Ser. A	8,000.00

and the following amounts were paid in cash on original bonds, to-wit:

Districts 5/11	225.93
District 22	2.50

At the time of the issuance of said refunding obligations, defendant Township was in default in the payment of principal in the aggregate principal amount of $303,325.00, and, in the payment of accrued interest in the amount of $90,263.26, and had, no, or, insufficient, funds derived from

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collections on special assessment taxes from the rolls in said special assessment districts out of which to pay the same, and, it thereupon became and was the duty of defendant, Township of Royal Oak, to discharge its contingent liability thereon by the issuance of said Refunding Bonds and Certificates of Indebtedness to refund such liability, and said Refunding Bonds and Certificates of Indebtedness are valid and enforceable general obligations of defendant, Township of Royal Oak.

2. Statutes under which bonds were issued are not unconstitutional.

The provisions of Act No. 58, Public Acts 1927 (Sec's. 2385-88 C. L. '29), requiring the Township Board to advance moneys to pay principal and interest on bonds, which was both retrospective as well as prospective in effect, as applied to bonds issued prior to the effective date of said act, was not unconstitutional as authorizing the levy of a tax for a private purpose and did not constitute the taking of property without due process of law in violation of Section 16, Article 11 of the Michigan Constitution and Articles V and XIV, Section 1, of Amendments to the United States Constitution. The provisions of subdivision k, section 4 of Act No. 13, Public Acts 1932 (First Extra Session), as amended, providing that "all refunding bonds issued under the provisions thereof, except . . . (exception not here applicable) shall unless otherwise provided in such refunding bonds, be the general obligation of the issuing municipality and the full faith and credit of the same shall be pledged to the payment thereof," as applied to the refunding bonds, was not unconstitutional as authorizing the levy of a tax for a private purpose and would not constitute the taking of property without due process of law in violation of Section 16, Article 11 of the Michigan Constitution, and Articles V and XIV, Section 1, of Amendments to the United States Constitution. Act No. 116, Public Acts 1923, as amended by Act No. 263, Public Acts 1925 and Act No. 58, Public Acts 1927 (Sec's. 2385-88 C. L. '29), and Act No. 13, Public Acts 1932 (First Extra Session), ((Sec's. 5.3201-5.3219 Stat. Ann.) (Subsequently repealed

by Act No. 202 Public Acts 1943, with saving clause, being Sec's. 5.3188(1)-(49) (Stat. Ann.)) are constitutional.

3. Liability of incorporating or annexing municipality where incorporated or annexed territory did not include any part of any special assessment district.

Cross-defendants, City of Ferndale, City of Royal Oak, City of Hazel Park, City of Pleasant Ridge, City of Berkley, City of Huntington Woods and City of Clawson, which incorporated or annexed portions of the territory of defendant, Township of Royal Oak, are liable to defendant, Township of Royal Oak, as herein provided, notwithstanding that some portions of such territory so incorporated or annexed were not included in any of the special assessment districts.

4. Township not required to submit question of issuance of bonds to electors.

Defendant, Township of Royal Oak, under the laws of the State of Michigan, was not required to submit the question of the issuance of the Special Assessment Bonds or the Refunding Bonds to a vote of the electors of the township.

5. Date of creation of contingent liability of defendant and cross-defendants on Special Assessment Bonds.

The contingent liability of defendant Township of Royal Oak on the Special Assessment Bonds which form the basis of this action was created on the respective dates of the delivery of such bonds to the purchasers as hereinbefore set forth in paragraph 1a. hereof, and each of the cross-defendants, City of Ferndale, City of Royal Oak, City of Hazel Park, City of Pleasant Ridge, City of Berkley, City of Huntington Woods and City of Clawson, upon incorporation or annexation of a portion of the Township territory at any time thereafter, became liable for its proportionate share of such contingent liability which existed at the time of such incorporation or annexation.

6. Settlement agreements did not constitute accord and satisfaction.

The various settlement agreements between the Township of Royal Oak and the several cross-defendant municipali-

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ties, which incorporated or annexed portions of township territory, did not constitute accord and satisfaction as to the contingent liability of the Township of Royal Oak and such municipalities on the Special Assessment Bonds and Refunding Bonds.

7. Valuation of township where there are successive annexations during any one year.

The value of the taxable property of the township, as shown by the total assessed valuation of all property in the Township by the current assessment rolls, less any deductions therefrom because of prior incorporation or annexation of township territory during such year, must be used for the purpose of determining the proper division of assets and liabilities of the township upon any subsequent incorporation or annexation of township territory during such year.

8. Effect of township's failure to levy additional special assessment taxes.

The failure of the township to levy additional special assessment taxes for the purpose of paying the Special Assessment bonds did not relieve cross-defendants, City of Ferndale, City of Royal Oak, City of Hazel Park, City of Pleasant Ridge, City of Berkley, City of Huntington Woods and City of Clawson, from their proportionate liability for the payment of such bonds as hereinbefore decreed. Provided, however, this decree is without prejudice to the rights of any parties hereto, relative to the alleged duty to levy reassessments (or additional pro-rata assessments) to cover deficiencies in the collection of assessments in the various special assessment districts.

9. Liability of Municipalities on Refunding Bonds.

Cross-defendants, City of Ferndale, City of Royal Oak, City of Hazel Park, City of Pleasant Ridge, City of Berkley, City of Huntington Woods and City of Clawson are liable, respectively, for the payment to the defendant, Township of Royal Oak, of those portions of principal and interest on the Special Assessment Bonds and the Refunding Bonds and Certificates of Indebtedness heretofore paid by the defendant, Township of Royal Oak out of funds derived by

it other than from collections of special assessment taxes from the rolls in said Special Assessment Districts, and for contribution to the payment of those portions of principal and interest on the Refunding Bonds and Certificates of Indebtedness remaining unpaid, such liability to be determined according to the percentage of the assessed valuation of the taxable property of portion of Township territory incorporated or annexed by each such municipality, at the time of each such incorporation or annexation, to the total assessed valuation of the taxable property in the Township immediately before such incorporation or annexation. The schedule attached hereto as Exhibit A and made a part hereof, sets forth the essential information together with the dates of delivery of such bonds set forth in paragraph 1a. hereof, to be used in determining such liability:

10. Accounting.

An accounting shall be had under the direction of the Circuit Court for the County of Oakland, in Chancery, between defendant Township and cross-defendant cities to determine the total amount heretofore derived by the Township from collections of special assessment taxes from the rolls in such Special Assessment Districts, the total amount of principal and interest heretofore paid by the Township for principal and interest on said Special Assessment Bonds and on said Refunding Bonds and Certificates of Indebtedness, the amounts which the respective cross-defendants are liable to pay to the Township by reason of amounts of principal and interest heretofore paid by the Township for principal and interest on said Special Assessment Bonds and on said Refunding Bonds and Certificates of Indebtedness from funds other than those derived from collections of special assessment taxes from rolls in said Special Assessment Districts, and the amounts which the respective cross-defendants are liable to contribute by reason of amounts of principal and interest which remain unpaid on said Refunding Bonds and Certificates of Indebtedness.

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11. Method of Payment.

Cross-defendant municipalities, City of Ferndale, City of Royal Oak, City of Hazel Park, City of Pleasant Ridge, City of Berkley, City of Huntington Woods and City of Clawson, for the year 1947, or in the first year following the entry of a decree in said accounting, unless a longer period be granted by the said circuit court in chancery, shall raise a sufficient amount to repay defendant township for any sums found due it on the accounting decreed in the foregoing paragraph hereof, and, at the close of the tax collection period, shall pay the same to defendant township. Defendant township and cross-defendant municipalities shall, each year after the entry of this decree, raise a sufficient amount to pay their respective shares of all principal and interest during such year on said Refunding Bonds and Certificates of Indebtedness less any receipts from special assessment taxes, and cross-defendants shall, at the close of each tax collection period, pay the same to defendant Township, or by depositing the same with the paying agent hereafter designated by the said circuit court in chancery, to be deposited in a special account for the payment of principal and interest on said bonds.

12. Retention of jurisdiction.

Jurisdiction over all of the matters herein involved shall be retained by the Circuit Court for the County of Oakland, in Chancery, for the purpose of determining all questions which may arise in connection with the execution and carrying into effect of the terms and provisions hereof upon completion of the accounting hereinbefore directed, and, for the further purpose of determining the compensation which should be allowed to counsel for the intervening defendants, Edgar B. Whitcomb and Anna S. Whitcomb and the City of Highland Park, acting in behalf of all holders of Refunding Bonds, Series A, B and C, and Certificates of Indebtedness, issued in connection therewith, from amounts which are to be paid by the defendant Township of Royal Oak and the cross-defendant Cities to the holders of such Refunding Bonds and Certificates of Indebtedness, and leave is hereby granted to any of the parties hereto to

make application to said court at any time for such orders or directions as may be necessary or proper in relation thereto.

All injunctions heretofore issued in connection with proceedings in this cause may be, and, the same hereby are dissolved.

Inasmuch as questions of a public nature are involved no costs will be taxed.

—— ——.

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EXHIBIT A

Name of Incorp. (I) or Annexing (A) Municipality		Date of Filing Election Results with Secretary of State	Assessed Valuation of Territory Taken	Assessed Valuation of Territory immediately before Separations	Valuation Based on Assessment Roll for Year of	Liability of Municipality		Refunded by Refunding Sinking Fund Bonds-Series
						Percentage of Liability %	On Bonds re Roll Numbers:	
1. Ferndale	(I)	1-29-37	$14,457,780	$53,145,995	1926	27.2039	5-11 Inc.	
2. Royal Oak	(A)2	4-25-27	2,393,580	38,688,215	1926	6.1868	5-11 Inc.	
3. Ferndale	(A)	8-23-27	806,550	38,945,060	1927	2.0710	5-11 Inc. 12-18 Inc.	
4. Pleasant Ridge	(I)	1- 3-28	3,982,465	38,138,510	1927	10.4421	5-11 Inc. 12-18 Inc.	
5. Ferndale	(A)	3- 3-28	985,200	34,156,045	1927	2.8844	5-11 Inc. 12-18 Inc.	
6. Ferndale	(A)	6-11-28	1,499,046	33,453,689	1928	4.4810	5-11 Inc. 12-18 Inc. 22-25 Inc.	
7. Royal Oak	(A)	4-16-29	244,572	31,954,643	1928	.7654	5-11 Inc. 12-18 Inc. 22-25 Inc. 27-34 Inc. 35	
8. Royal Oak	(A)	9-14-29	2,170,745	31,482,285	1929	6.8951	5-11 Inc. 12-18 Inc. 22-25 Inc. 27-34 Inc. 35 Inc.	
9. Berkley	(I)	4-18-32	4,955,925	27,954,468	1931	17.7286	5-11 Inc. 12-18 Inc. 22-25 Inc. 27-34 Inc. 35	
10. Huntington Woods	(I)	6-22-32	$2,792,095	$17,740,413	1932	15.7386	5-11 Inc. 12-18 Inc. 22-25 Inc. 27-34 Inc. 35	

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EXHIBIT A

Name of Incorp. (I) or Annexing (A) Municipality		Date of Filing Election Results with Secretary of State	Assessed Valuation of Territory Taken	Assessed Valuation of Territory immediately before Separations	Valuation Based on Assessment Roll for Year of	Liability of Municipality		Refunded by Refunding Sinking Fund Bonds-Series
						Percentage of Liability %	On Bonds re Roll Numbers:	
11. Clawson	(1)	6-13-40	905,975	12,604,270	1939	7.1878	5-11 Inc.	A
							5-11 Inc.	B
							12-18 Inc.	C
							22-25 Inc.	C
							27-34 Inc.	C
							35	C
							Accrued Interest	IRCI*
12. Ferndale	(A)	9-17-40	76,600	7,913,525	1940	.9680	5-11 Inc.	A
							5-11 Inc.	B
							12-18 Inc.	C
							22-25 Inc.	C
							27-34 Inc.	C
							35-	C
							Accrued Interest	IRCI
13. Hazel Park	(1)	9-29-41	4,933,550	9,595,530	1941	51.4151	5-11 Inc.	A
							5-11 Inc.	B
							12-18 Inc.	C
							22-25 Inc.	C
							27-34 Inc.	C
							35	C
							Accrued Interest	IRCI
14. Royal Oak	(A)	2-20-42	950,156	4,661,980	1941	20.3810	5-11 Inc.	A
							5-11 Inc.	B
							12-18 Inc.	C
							22-25 Inc.	C
							27-34 Inc.	C
							35	C
							Accrued Interest	IRCI

* IRCI—Interest Refunding Certificates of Indebtedness.

"Boyles, *J.*:

In 1940 plaintiffs Hazel Park Nonpartisan Taxpayers Association and John G. Campbell filed a bill of complaint in the circuit court for Oakland County in chancery to enjoin the township of Royal Oak from collecting any taxes on property in said township lying outside of certain special assessment districts, for the purpose of paying instalments on certain refunding bonds issued by the township in 1938 to retire certain defaulted special assessment bonds issued in 1926, 1927 and 1928. The then Michigan public debt commission, now the municipal finance commission, which had authorized the issuance of the refunding bonds, the city of Highland Park and Edgar B. Whitcomb and Anna S. Whitcomb, as owners of some of the refunding bonds, and the village of Oak Park which had been organized from a portion of said township, were granted leave to intervene, and filed answers to the bill of complaint.

The township of Royal Oak as the original defendant subsequently filed an amended answer and cross bill, setting forth that after the issuance of some of the special assessment bonds or refunding bonds, the following seven municipalities: city of Royal Oak, city of Ferndale, city of Huntington Woods, city of Pleasant Ridge, city of Clawson, city of Berkley, and city of Hazel Park had annexed portions of the township's territory or incorporated portions of it within their respective cities, and were consequently chargeable with their pro rata shares of any indebtedness on such bonds which might be decreed against the township. These seven municipalities were named as cross-defendants, and appeared and filed answers.

The parties in the trial court represented four general interests: The township of Royal Oak, individual taxpayers who might be assessed for taxes to pay the refunding bonds, bondholders who accepted refunding bonds in exchange for special assessment bonds, and municipalities which might be proportionately liable to pay a pro rata share of the bonds because of acquisition of portions of the township territory through annexation or incorporation.

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The special assessment bonds were originally issued to pay for sewer and water mains under Act No. 116, Pub. Acts 1923, as amended by Act No. 263, Pub. Acts 1925, and in the case of some of the bonds by Act No. 58, Pub. Acts 1927 (for present provisions, see Comp. Laws Supp. 1940, 1945, Sec. 2385 et seq., Stat. Ann. and Stat. Ann. 1946 Cum. Supp. Sections 5.2411-5.2414).

The refunding took place under authority of an order of the public debt commission, dated January 14, 1938, pursuant to Act No. 13, Pub. Acts 1932 (1st Ex. Sess.), as amended by Act No. 143, Pub. Acts 1933, and Act No. 42, Pub. Acts 1935, and Acts Nos. 16, 56, 98, 271, Pub. Acts 1937 (Stat. Ann. and Stat. Ann. 1938 Cum. Supp. Sections 5.3201-5.3219). This legislation was repealed by Act No. 202, Pub. Acts 1943, which contains a saving clause (Comp. Laws Supp. 1943, Sections 2689-21—2689-103, Stat. Ann. 1943 Cum. Supp. Sections 5.3188(1) 5.3188(50)). Series A and B bonds refunded special assessment bonds issued on special assessment rolls 5 to 11 inclusive, prior to the effective date of Act No. 58, Pub. Acts 1927. Series C bonds refunded those issues subsequent to that date.

Commencing with the creation of each special assessment district the township began to levy special assessment taxes against the taxable property in each district, and continued such levies through the full 5 year period covered by the special assessment bonds. Instalments of principal and interest were paid for a time from collections of special assessment taxes, and from time to time thereafter with money from the general fund of the township when there was insufficient money in the special assessment funds to meet payments. On or before April 1, 1930, default was made in some of the issues, and by April 1, 1933, all of the issues were in default on interest and principal outstanding. The totals of the special assessment rolls were extremely high as compared with the assessed valuation of all taxable property in the districts. The percentage of special assessments to assessed valuation ran from a low of 6 per cent, in one district to a high of 24 per cent in another district, with an average of 13 to 14 per cent in all districts. Because of defaults in paying general taxes and special assessments,

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a large amount of property in the special assessment districts has gone through "scavenger sale."

At the time of the refunding, the township had only some $12,000 in its general fund, which was barely sufficient to pay outstanding orders already issued on that account. As of October 1, 1936, there was a total of $316,553.43 principal due on the special assessment bonds in question, and delinquent interest of $100,135.43.

Except as may be hereinafter noted, additional factual background underlying the questions raised on the instant appeal may be found in Whitman *v.* Township of Royal Oak, 269 Mich. 146; Township of Royal Oak *v.* City of Pleasant Ridge, 295 Mich. 284; Township of Royal Oak *v.* City of Pleasant Ridge, 307 Mich. 714; Township of Royal Oak *v.* City of Berkley, 309 Mich. 572.

In the circuit court the judge stated the claims of the parties as follows: The contention of the township of Royal Oak, defendant and cross-plaintiff, is that in view of the decision of this Court in the Whitman Case, supra, its contingent liability on the special assessment bonds became fixed prior to the issuing of the refunding bonds, that the refunding bonds supplanted the special assessment bonds and are now the general obligation of the township in the same manner as the special assessment bonds, and that the intervening defendants and cross-defendants, which since the issuing of the special assessment bonds have annexed portions of the township territory, are each liable for a proportionate share of the refunding bonds.

It is the contention of the city of Royal Oak, cross-defendant, that (1) in no event did the city incur any liability as the result of the first annexation which took effect October 4, 1926, because the bonds had not been issued; (2) having fully settled all obligations incurred by the city as the result of the annexations of 1927 and 1929 the city is not liable by reason of those annexations; (3) Act No. 13, Pub. Acts 1932 (1st Ex. Sess.), as amended (see Comp. Laws Supp. 1940, 1942, Sec. 2705-1 et seq., Stat. Ann. and Stat. Ann. 1942 Cum. Supp. Sec. 5.3201 et seq.), is unconstitutional in so far as it attempts to make refunded special assessment bonds general obligations, and therefore the city's liability, if any,

applies only to the annexation of 1942 and only to that portion of the refunded bonds that may be paid from recoverable special assessments.

It is the contention of the city of Ferndale, cross-defendant, that (1) the city of Ferndale did not assume any liability by reason of the detachment of territory from the township of Royal Oak when it became incorporated as a city on January 31, 1927, because there was no general obligation liability against the township of Royal Oak on that date in respect to any matters involved in this litigation. The only outstanding bonds were those issued in respect to districts 5 to 11, inclusive, and those bonds were strictly special assessment bonds; (2) the legislature by the passage of Act. No. 58, Pub. Acts 1927 (amending Act No. 116, Pub. Acts 1923) could not constitutionally impose any general obligation liability upon the township as to bonds issued prior to the effective date of that act; and that therefore bonds in respect to districts 5 to 11, dated October 1, 1926, should be eliminated from any and all consideration in determining the liability of incorporating or annexing cities, except possibly in those cases where the decision in Whitman *v.* Township of Royal Oak, supra, whether right or wrong, would be res judicata; (3) the issuance of general obligation bonds to refund strictly special assessment bonds is not constitutionally permissible.

It is the contention of the city of Pleasant Ridge and the City of Huntington Woods, cross-defendants, that (1) inasmuch as no possibility exists for reimbursements of a general fund through subsequent collections of special assessments, the 1927 amendment imposing a liability on the township to pay out of its general fund is unconstitutional, both as to bonds theretofore and thereafter issued; (2) the township of Royal Oak must reassess the deficiency in collections of special assessments in order to provide funds to discharge the obligations of the refunding bonds.

The cross-defendants city of Hazel Park, city of Berkley, and city of Clawson deny generally the claims of cross-plaintiff, the township of Royal Oak.

The contention of the bondholders Whitcomb, city of Highland Park, and municipal finance commission, inter-

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vening defendants, agrees with the contention of cross-plaintiff and asserts that the refunding bonds are valid.

The trial court held: (1) That the special assessment bonds were made contingent liabilities of the township by Act No. 116, Pub. Acts 1923, as amended by Act No. 58, Pub. Acts 1927; (2) that this act and the act authorizing the refunding bonds were constitutional; (3) that a municipality which has annexed territory not included in any of the special assessment districts is liable for its pro rata share of such liabilities; (4) that the township was not obliged to submit the issuance of bonds to electors of the township; (5) that the contingent liability of the township attached upon the confirmation of the special assessment rolls; (6) that none of the township's settlement agreements with the municipalities constituted accord and satisfaction; (7) that the township valuation to be used where there were successive annexations of territory during one year is the value shown by the current assessment rolls, less any deductions therefrom because of prior annexation or incorporation during the year; (8) that the township had no power or authority to levy additional special assessments for the purpose of paying the special assessment bonds, and that the township's failure to levy additional special assessment taxes did not affect the liability of the cross-defendant municipalities.

A decree was entered in effect as follows: (1) Specifically designating the special assessment bonds issued by the township and defining the liability of the township on the special assessment bonds thus issued, both as to original bonds and the refunding bonds; (2) declaring that the statutes under which these bonds were issued were not unconstitutional; (3) decreeing that the cross-defendant seven cities, Ferndale, Royal Oak, Hazel Park, Pleasant Ridge, Berkley, Huntington Woods, and Clawson which had incorporated or annexed portions of the township were liable to the township notwithstanding that some portions of such territory so incorporated or annexed were not included in any of the special assessment districts; (4) that the township was not required to submit to the electorate the question of issuance of the special assessment bonds or the

refunding bonds; (5) that the contingent liability of the township on the special assessment bonds was created on the dates of the confirmation of the respective rolls for the levying of special assessment taxes for the payment of such bonds and that each of the seven cross-defendant cities hereinbefore named, upon incorporation or annexation of a portion of the township territory at any time thereafter, became liable for its proportionate share of such contingent liability which existed at the time of such incorporation or annexation; (6) that the various settlement agreements between the township and the several cross-defendant cities did not constitute accord and satisfaction as to their respective rights and liabilities; (7) that where there were successive annexations during any one year the value of the taxable property of the township as shown by the total assessed valuation of all property in the township by the current assessment rolls, less any deductions therefrom because of prior incorporation or annexation of township territory during the year, must be used in determining the proper division of assets and liabilities of the township upon any subsequent incorporation or annexation of township territory during such year; (8) that the township had no power or authority to levy and collect reassessments in the special assessment districts to make up the deficiencies, and that the failure of the township to levy additional special assessment taxes for the purpose of paying the special assessment bonds did not relieve the seven cross-defendant cities hereinbefore named from their proportionate liability for the payment of such bonds; (9) that said seven cross-defendant cities were respectively liable for payment to the township of those portions of principal and interest on the special assessment bonds, the refunding bonds and certificates of indebtedness theretofore paid by the township out of funds derived by it other than from collections of special assessment taxes, and for contribution toward payment of such principal and interest remaining unpaid, to be determined according to the percentage of the assessed valuation of the taxable property of the portion of township territory incorporated or annexed by each such city at the time of each such incorporation or annexation,

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to the total assessed valuation in the township immediately before such incorporation or annexation; (10) that an accounting be had under the direction of the court between the township and the seven cross-defendant cities, to determine the total amount of money derived by the township from collections of special assessment taxes, total amount of interest and principal paid by the township on the bonds and certificates of indebtedness, and the amount which each of the said seven cities was liable to pay to the township; (11) defining the manner, method and time for such payments by the seven cross-defendant cities; (12) retaining jurisdiction for the accounting, for determining questions which might arise concerning the carrying into effect of the decree and compensation of counsel, and dissolving all injunctions previously issued.

From this decree the city of Ferndale appeals, the cities of Pleasant Ridge and Huntington Woods have joined together in a cross-appeal, and the city of Royal Oak takes a separate cross-appeal. The other parties, not having sought a review, must be considered as content with the decree.

A. Appeal of Ferndale.

The city of Ferndale contends that it is not liable for any portion of the district 5 to 11 bonds, by reason of its incorporation on January 31, 1927, first because the pertinent section of the home-rule act (1 Comp. Laws 1929, Sec. 2250) at that time provided in terms only for division of liabilities upon annexation. A clause referring to incorporation was added by Act No. 233, Pub. Acts 1931 (Comp. Laws Supp. 1940, Sec. 2250, Stat. Ann. Sec. 5.2093). If this interpretation of the original act were correct it would be of doubtful constitutionality, for the bondholder could not be required to take less security upon a division of territory. Board of Education of City of Lincoln Park *v.* Board of Education of City of Detroit, 245 Mich. 411. But appellant (Ferndale) did not raise this question at the trial, and it was not presented as a ground of appeal; therefore we will not pass upon it here. Franklin Mining Co. *v.* Harris, 24 Mich. 115; Mahiat *v.* Codde, 106 Mich. 387; Stanton *v.*

Stanton, 197 Mich. 161, 165; Donahue *v.* Gordon, 292 Mich. 581. The bonds with respect to assessment rolls Nos. 5 to 11 were issued prior to the effective date of Act No. 58, Public Acts 1927. This act added to section 3 of the original township special assessment act the following:

> "If any such special assessment fund is insufficient to pay such bonds and interest thereon when due, the township board shall advance the amount necessary, to pay such bonds, and shall be reimbursed from such assessments when collected, or by reassessment of the deficiency if necessary."

While we conclude that this is retroactive as well as prospective in effect, we do not agree with appellant that if retroactive it is unconstitutional for that reason. This provision was held to be constitutional in Whitman *v.* Township of Royal Oak, supra, p. 151, notwithstanding it was there given a retroactive effect. It follows that the contingent liability of the township relates back to the date on which liability arose on the special assessment bonds. We do not read Township of Royal Oak *v.* City of Pleasant Ridge, 295 Mich. 284, to the contrary effect. The question here presented, as to the liability of the city (Pleasant Ridge, in that case) in case of inability of the township to obtain from special assessment funds sufficient to pay the bonds in full, whereby the township might eventually have to pay a balance due on such bonds from its general fund, was not there before the Court. It was said (p. 293):

> "Should such a condition ultimately come about, there might then be room for the contention that the contingent statutory liability to advance money from the township's general funds had accrued and that payment, when made, was necessitated because it was then a general obligation of the township contracted before the severance of township territory by the defendant city. In that event the question would be presented as to whether the defendant city of Pleasant Ridge would not be liable for payment of its proportionate share of the general liability of the township which had accrued because of inability, if such should happen, to derive suffi-

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cient funds from the special assessments or reassessments to discharge in full the bond indebtedness. Suffice to say that on this appeal we do not have before us nor are we herein passing upon such a case; but a reservation might well be made in the decree to be entered in this case covering such a contingency."

Any doubt as to the holding of the Court in Township of Royal Oak *v.* City of Pleasant Ridge, 295 Mich. 284, was dispelled by this Court in Township of Royal Oak *v.* City of Pleasant Ridge, 307 Mich. 714, after a so-called consent decree which had been improperly entered in the circuit court in the original case was referred back to that court by this Court for further consideration. In the latter case we said (pp. 716, 719):

"Unfortunately, instead of the decree being entered in this Court, it was entered in the court below and it was stated therein that the special assessment bonds were not the general obligation bonds of the township of Royal Oak. Evidently due to an oversight on the part of the attorneys, all reference to the consideration of a possible future liability, should a certain condition arise, was omitted. . . . The Court was correct in granting the new decree nunc pro tunc following all the terms consented to in the decree theretofore entered in the circuit court but incorporating the wording of our opinion in leaving the liability of the city to future consideration should conditions arise so that the township of Royal Oak hereafter might claim that there was such liability."

This appellant (Ferndale) further contends that at the time of the city's incorporation, no liability existed against the township of Royal Oak, as Act No. 58, Pub. Acts 1927, which imposed the contingent liability of a guarantor upon the township, did not become effective until April 21, 1927. This is but another way of challenging the retroactive effect of that act, and it is equally without merit. Neither do we find any merit in appellant's contention that the above-quoted provision in Act No. 116, Sec. 3, Pub. Acts 1923, as

amended by Act No. 58, Pub. Acts 1927, must be held unconstitutional if applied to special assessment bonds issued prior to the effective date thereof, in that it would constitute the taking of property (of the appellant city) without due process of law. The city, by its incorporation, carved taxable real estate out of the township which, under the contingency hereinbefore referred to, would become liable to taxation to pay defaulted special assessment bonds, for which payment the township ultimately became liable, the contingency having arisen. If the ultimate liability of the city must be considered as taking property without due process of law, the owners of the remaining taxable property in the township, after a city had taken out, by incorporation (or annexation), portions of the taxable property in the township, might be in an equal position to claim that, due to their increased burden of taxation, the city, by its very incorporation, was depriving them of property without due process of law. These viewpoints would equally ignore the ultimate rights of the bondholders. In furtherance of its claim that said Act No. 58, Pub. Acts 1927, is unconstitutional in that it takes property without due process of law, appellant contends that said act authorizes the levying of a tax for a private purpose, i. e., to pay bondholders. One weakness in this claim lies in the fact that the levy is, in effect, for the purpose of paying the original expense of the special improvements, through the medium of repaying those who loaned the funds for that purpose. The position taken by appellant was answered in the negative in Whitman *v.* Township of Royal Oak, supra, citing Moore *v.* Harrison, 224 Mich. 512, and Regents of University of Michigan *v.* Pray, 264 Mich. 693. To the same effect, even though there was no possibility of reimbursement, were Graves *v.* Bliss, 235 Mich. 364, certiorari denied, 273 U. S. 724 (47 Sup. Ct. 113, 71 L. Ed. 859); City of Highland Park *v.* Dearborn Township, 285 Mich. 440; City of Highland Park *v.* Oakland County Drain Commissioner, 312 Mich. 407.

Appellant contends that the proposed tax would have no purpose other than the relief of bondholders, citing cases which have held such levies unconstitutional for that reason. We do not agree that the motives and purposes of the legis-

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lature are so lightly to be impugned. A statute may not be declared unconstitutional if there is any reasonable ground upon which its validity may be sustained. We agree with the courts which have held that the restoration of the credit of the municipality, the restoration of delinquent lands to the tax rolls, and the readjustment of the tax burden in a more equitable manner, are legitimate public purposes, which render the act constitutional even though applied retroactively. City of Crescent City *v.* Moran, 25 Cal. App. (2d) 133 (77 Pac. (2d) 281); County of San Diego *v.* Hammond, 6 Cal. (2d) 709 (59 Pac. (2d) 478, 105 A. L. R. 1155); Durrett *v.* Davidson, 122 Ky. 851 (93 S. W. 25, 8 L.R.A. (N.S.) 546); Deseret Savings Bank *v.* Francis, 62 Utah, 85 (217 Pac. 1114). See, also, City of Dunsmuir *v.* Porter, 7 Cal. (2d) 269 (60 Pac. (2d) 836). It is immaterial that private persons may receive incidental benefits from the legislation. But the discharge of a moral obligation is also a legitimate end of legislation in cases of this type. (Lyman *v.* Chase, 178 Minn. 244 (226 N. W. 633); Kinney *v.* Astoria, 108 Ore. 514 (217 Pac. 840)), and support for such legislation has been found in the continuing public benefit of the improvements themselves. Comfort *v.* City of Tacoma, 142 Wash. 249 (252 Pac. 929). See, also, dissenting opinion in Oregon Short Line R. Co. *v.* Berg, 52 Idaho, 499 (16 Pac. (2d) 373). We agree with the trial court that said act is not unconstitutional on the grounds urged, and this conclusion is in accord with the result reached in Whitman *v.* Township of Royal Oak, supra. This conclusion applies with equal force to appellant's claim that Act No. 13, Sec. 4, subd. i, Pub. Acts 1932 (1st Ex. Sess.), as amended (for refunding municipal indebtedness) is unconstitutional for like claimed reasons. We hold that both of said acts are not unconstitutional on the grounds asserted by said appellant herein.

The remaining question raised by this appellant (Ferndale) challenges the conclusion reached by the circuit court in holding that the township's liability on the special assessment bonds arose on the dates of the confirmation of the special assessment rolls. We are unable to agree with the reasoning of the trial court in that regard. Act No. 116,

Sec. 3, Pub. Acts 1923, places a lien upon the lots assessed in a special assessment district, from the date of confirmation of the assessment roll. The confirmation of a special assessment roll does not create a liability against the township but rather creates a liability against the property owner. The confirmation of a special assessment roll may be a basis for the subsequent issuance of such bonds, but not necessarily so. If the assessment should be made due in one instalment, no bonds would be issued. The holding of the trial court is contrary to the holding of this Court in Township of Dearborn *v.* City of Dearborn, 308 Mich. 284. Bonds are issued not on the date which they bear, but rather when they are delivered to the purchaser, inasmuch as no liability is created against the issuer until such delivery. Section 14 of the Michigan negotiable instruments law (2 Comp. Laws 1929, Sec. 9261 (Stat. Ann. Sec. 19.54)) reads as follows:

> "The instrument is not invalid for the reason only that it it antedated or postdated, provided this is not done for an illegal or fraudulent purpose. The person to whom an instrument so dated is delivered acquires the title thereto, as of the date of delivery."

The township's liability as guarantor cannot be said to arise before the bonds are issued and delivered. It is claimed that liability did not arise until the subsequent happening of the contingency, i. e., defaults and lack of special assessment funds. However, the township's liability, although contingent, was there continuously from the time of the delivery of the bonds. It is implied in Township of Dearborn *v.* City of Dearborn, supra, that this liability arises when the bonds are issued. Such a theory conforms with section 14 of the negotiable instruments law, supra. We find in the record before us that the dates of delivery of the special assessment bonds were as follows:

Rolls 5-11	October 11, 1926
12-18	August 19, 1927
22-25	April 7, 1928
26-34	August 15, 1928
35	September 26, 1928

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It was held in Township of Dearborn *v.* City of Dearborn, supra, p. 291 that the date of filing the result of the election with the secretary of State and the county clerk determines the date of incorporation, or annexation of territory detached from the township, and that the city becomes liable for contribution for indebtedness existing at the date of annexation. The liability of the city of Ferndale on rolls 12 through 18 does not, therefore, arise by reason of its original incorporation on January 31, 1927, but Ferndale does become proportionately liable thereon by virtue of the annexations of August 24, 1927, and later dates. Liability on rolls 5-11 attached to the city of Ferndale upon its incorporation as well as all later annexations. Its liability on rolls 22-25 attaches by reason of the annexations of June 14, 1928, and after; on rolls 26-35 by reason of the annexation of September 17, 1940.

The foregoing appears to be in accordance with a part of paragraph 5 of the decree, as it is construed by this Court. It might be proper to enter a clarification of said paragraph 5 when a decree is entered in this Court. The appellant city of Ferndale became liable for its proportionate share of such contingent liability in accordance herewith. Inasmuch as appellants city of Royal Oak, city of Pleasant Ridge, city of Huntington Woods have raised this same question on the appeal, the foregoing decides the issues as thus raised by them. In that connection, it is proper to add that we find from the record, that the cities of Pleasant Ridge, Huntington Woods and Royal Oak became liable as follows: City of Pleasant Ridge became proportionately liable on rolls 5-18 only, by its incorporation of December 31, 1927; city of Huntington Woods became proportionately liable on all bonds, by its incorporation of June 24, 1932; city of Royal Oak became liable on no bonds, by its annexation of October 4, 1926. It became proportionately liable on rolls 5-11, by annexation of April 22, 1927. It became proportionately liable on all bonds, by annexations of April 19, 1929, and later dates.

B. Appeal of Pleasant Ridge, Appeal of Huntington Woods.

Except for two final questions, these appellants raise the same issues as those raised by the city of Ferndale, which have been answered. In addition, these appellants, briefly joined in by the city of Royal Oak, challenge paragraph 8 of the decree wherein the trial court declared that the township had no power or authority to levy additional special assessments (reassessments ?) for the purpose of paying the special assessment bonds, and that the failure to levy such "additional special taxes" did not relieve the seven cross-defendant cities from their proportionate liability. Appellants Pleasant Ridge and Huntington Woods claim (1) that when a deficiency exists reassessment must be made; and (2) that the failure of the township to reassess such deficiencies estops it from requiring "seceding municipalities to pay a share of the loss incurred thereby."

This case was originally started by the plaintiffs to enjoin the township from levying taxes on property in the township outside the special assessment districts, to make up deficiencies in paying the refunding bonds hereinbefore referred to. The attorney for the plaintiffs who filed the original bill of complaint did not appear in court at the hearings and plaintiffs have not appealed. The original purpose of the suit seems to have been overshadowed by the cross bills and claims of the contending parties here, to obtain an adjudication of their respective rights and liabilities. The question as to whether the township, and also the cities of Ferndale and Royal Oak, should be required "by mandatory writ of injunction" to reassess the amounts of the deficiencies in the special assessment districts, was injected into the case by a late amendment (filed after the hearing was begun) by the interpleaded defendants (cross-plaintiffs) Pleasant Ridge and Huntington Woods. A new paragraph was added to their prayer for relief by these cross-plaintiffs, asking for such a "mandatory" injunction. We do not find in the record any indication that this amendment to their cross bill was answered by any of the other parties to the case. While we have repeatedly said that the court in taking jurisdiction in equity, will retain jurisdiction

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in order to do complete justice and settle all disputed questions in one proceeding, if possible, we do not consider that such a "mandatory injunction" should issue in this case, under the circumstances. Decision as to whether the township should be compelled to levy reassessments against the special assessment districts is not essential to decision on the other questions raised on this appeal.

The trial court, in paragraph 8 of the decree, referring to the effect of the township's failure to levy additional special assessment taxes, decreed as follows:

> "Defendant, township of Royal Oak, under the laws of this State had no power or authority to levy additional special assessments for the purpose of paying the special assessment bonds."

Act No. 116, Pub. Acts 1923 (1 Comp. Laws 1929, Sec. 2385 *et. seq.*, as amended (Comp. Laws Supp. 1940, 1945, Sec. 2385 *et seq.*, Stat. Ann. and Stat. Ann. 1946 Cum. Supp. Sec. 5.2411 *et seq.*)), provides for improvements by township boards. Counsel for Pleasant Ridge and Huntington Woods directs our attention to section 3 of said act, as amended (1 Comp. Laws 1929, Sec. 2387, as amended by Act No. 24, Pub. Acts 1934 (1st Ex. Sess.) (Comp. Laws Supp. 1940, Sec. 2387, Stat. Ann. Sec. 5.2413)), which provides in part that:

> "All proceedings relating to the making, levy and collection of special assessments herein authorized and issuing bonds in anticipation of the collection thereof, shall conform, as near as may be, to the proceedings for levying special assessments and issuing special assessment bonds by villages, for like improvements, as set forth in act number 3 of the public acts of Michigan for 1895, as amended, being chapter 72 of the compiled laws of Michigan for 1915, as amended. If any such special assessment fund is insufficient to pay such bonds and interest thereon when due and said bonds shall have been issued subsequent to the 21st day of April, 1927, the township board may advance the amount necessary to pay such bonds, and shall be reimbursed from such assessments when collected, *or by reassessment* of the deficiency if necessary."

Act No. 3, Pub. Acts 1895 (Comp. Laws 1915, chap. 72), as amended, referred to in the above section 3, is the general act for incorporation of villages. It may be found in 1 Comp. Laws 1929, Sec. 1465 *et seq.* (Stat. Ann. Sec. 5.1201 *et seq.*). Section 12 of chapter 8 of that act (1 Comp. Laws 1929, Sec. 1624 (Stat. Ann. Sec. 5.1360)) provides:

> "Should any special assessment prove insufficient to pay for the improvement or work for which it was levied, and the expenses incident thereto, the council may, within the limitations prescribed for such assessments, make an additional pro rata assessment to supply the deficiency."

This has been held to be mandatory. Wood *v.* Village of Rockwood, 311 Mich. 381, 389.

Said counsel for Pleasant Ridge and Huntington Woods claims that the foregoing refers to reassessment in special assessment districts, in connection with the questions raised on this appeal by said counsel for appellants Pleasant Ridge and Huntington Woods, as decided by the circuit court in paragraph 8 of the decree. We conclude that the present case is not the proper occasion to decide the question as to whether the township has the power to reassess and levy taxes against the property in the special assessment districts. That part of section 8 of the decree which purports to decree that the township does not have such power and authority will be deleted in the decree to be entered here. Many obvious problems to be settled in connection with any such reassessment have not been brought to our attention in the record and briefs in the instant case, and this is not a proper occasion for entering the "mandatory injunction" asked for by these two appellants, directing such reassessments. This we decline to do, inasmuch as the facts and circumstances which might affect such decision are not here fully before us.

As to the other claim made by these appellants, that the township is estopped from claiming liability against the seven cross-defendant cities because it has failed to reassess taxes, we have no hesitation in saying that a failure to reassess does not terminate the liability of the cross-defendant cities to share proportionately in making up the deficiencies.

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The rights of bondholders cannot thus be ignored, nor is such reassessment to be considered as a condition precedent to attaching liability to cities which by incorporation or by annexation of territory have taken taxable property out of the township. Such provision in paragraph 8 of the decree is affirmed.

A decree may be entered in this court affirming the decree from which these appeals have been taken, except in the particulars hereinbefore noted, and in consonance therewith certain provisions in said decree are hereby reversed. In such particulars the decree to be entered here will be in conformity with this opinion and it will provide for remanding to the circuit court for further proceedings in accordance with paragraph 12 of the decree.

We are not unmindful of the fact that the questions discussed herein are foreign to the issues originally raised by plaintiffs herein, in filing their bill of complaint. However, no one here questions the jurisdiction of the circuit court, or of this court on the appeal, to consider and pass upon the questions raised by the interveners, or by the cross-appellants. For that reason, we are not here in conflict with our decision in Youngs *v.* West, ante, 539, wherein the question of jurisdiction was raised. The importance of the problems discussed herein, as they may affect the hearing in the circuit court on the remand for an accounting, are sufficient justification for entertaining jurisdiction of the same on this appeal.

Parties to the appeal having each prevailed only in part, and public questions being involved, no costs awarded.

CARR, *C. J.*, and BUTZEL, BUSHNELL, SHARPE, REID, NORTH, and DETHMERS, *JJ.*, concurred.